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2011

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Citation

Stauffer, Hilary. Asean and the Evolving State of Human Rights. (2011). *Social Space*. 68-75.

Available at: https://ink.library.smu.edu.sg/lien_research/90

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Asean And The Evolving State Of Human Rights



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What is it about human rights in Asia that has international governments so worked up? According to **Hilary Stauffer**, it is not necessarily about differences in culture and geography.

Over the past several decades, consensus around the issue of human rights has been building. The manifestation of human rights in Asia may ultimately look different than it does in Europe, or the United States, or Latin America—and that is acceptable. True human rights defenders will welcome home-grown mechanisms that provide a measure of protection against rights violations for men, women and children—the citizens of Asia. Think-tanks, NGOs and multilateral organisations should do the same.

What matters most is that such rights do not remain unrealised ideals, but rather become common knowledge among ordinary people and are well-implemented by governments through strong, domestic institutions. This article will examine the human rights situation of one easily categorised subset of Asian countries: The member states of the Association of Southeast Asian Nations (ASEAN).¹ But before discussing the present circumstances and examining expectations for the future, a bit of history will give the discussion some context.

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Human Rights Generally

The ideal of “human rights,” in its modern incarnation, is only about 60 years old. Set out by a nascent United Nations (UN) after the horrors of World War II and the Holocaust, it is understandable that given the global power structure at the time, Western values appeared ascendant. Thus, human rights are often painted as a Western conceit—but they should not be, and, in fact, it is historically inaccurate to do so.

The 1948 Drafting Committee for the “International Bill of Rights” included representatives from China, the Soviet Union, and Lebanon—in addition to the United States, Australia and Canada.² Moreover, records from the UN General Assembly debate from that time indicate that support for the Universal Declaration of Human Rights (the international community’s first major attempt to codify human rights in the modern era) came from some surprising corners.

Pakistan, for instance, declared that “it was imperative that the peoples of the world should recognise the existence of a code of civilised behaviour which would apply not only in international relations but also in domestic affairs.” Meanwhile, Mexico and the UK were in agreement that the Declaration should not burden states with any legal obligations.³

When all was said and done, the Universal Declaration of Human Rights (UDHR) was adopted with 48 votes in favour and eight abstentions.⁴ Among those voting in favour were the Asian nations of Afghanistan, India, Pakistan, the Philippines and Thailand. (Note that several other countries in Asia and ASEAN were not yet in existence in 1948.)

The UDHR ultimately remained an aspirational document—that is, one with a great deal of moral, but not legal, authority. However, it provided a commanding list of positive and negative legal obligations that governments should seek to respect with regard to their citizens; rights they should either actively seek to promote, or at the very least not obstruct. It has been translated into 379 languages, which is twice as many languages as there are countries in the world, meaning its reach is unparalleled. And it has provided the starting point for every other human rights text crafted since 1948.

The UN Human Rights System

When people speak of “human rights obligations”, they are often referring to the nine major human rights treaties that have been drafted under the auspices of the United Nations since 1948. These are the:⁵

- Convention on the Elimination of All Forms of Racial Discrimination (1965) [CERD]
- International Covenant on Civil and Political Rights (1966) [ICCPR]
- International Covenant on Economic, Social and Cultural Rights (1966) [ICESCR]
- Convention on the Elimination of All Forms of Discrimination against Women (1979) [CEDAW]
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) [CAT]
- Convention on the Rights of the Child (1989) [CRC]
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) [CMW]
- Convention for the Protection of All Persons from Enforced Disappearance (2006) [CED]
- Convention on the Rights of Persons with Disabilities (2006) [CRPD]

None of the UN member states is party to every treaty, and no treaty has been universally accepted, although the Convention on the Rights of the Child has near-universal acceptance and the Convention on the Elimination of All Forms of Discrimination against Women has also been widely ratified, including by many Asian countries. The ASEAN member states are party to the following treaties (and certain treaties have been signed, but not ratified, signalling a country’s intention to become party to that convention at some future point):⁶

| | CERD | ICCPR | ICESCR | CEDAW | CAT | CRC | CMW | CED | CRPD |
|-------------|------|-------|--------|-------|-----|-----|-----|---------------|---------------|
| Brunei | | | | X | | X | | | <i>Signed</i> |
| Cambodia | X | X | X | X | X | X | | | <i>Signed</i> |
| Indonesia | X | X | X | X | X | X | | <i>Signed</i> | <i>Signed</i> |
| Lao PDR | X | X | X | X | | X | | <i>Signed</i> | X |
| Malaysia | | | | X | | X | | | X |
| Myanmar | | | | X | | X | | | |
| Philippines | X | X | X | X | X | X | X | | X |
| Singapore | | | | X | | X | | | |
| Thailand | X | X | X | X | X | X | | | X |
| Vietnam | X | X | X | X | | X | | | <i>Signed</i> |

Key: "X" signifies signed and ratified

Countries that have signed and ratified any of the UN human rights treaties have pledged to implement the rights and obligations outlined within, and to periodically report on their implementation to a monitoring body staffed by experts in that field. Such periodic reporting ensures there is some measure of accountability between human rights legislation and its implementation.

In addition to the human rights treaties, there is a relatively new UN process called the Universal Periodic Review (UPR), whereby each member state must report publicly on the state of its human rights record once every four years during a three-hour session that is open to outside observers. The country under review is examined by other UN member states who draw their questions from a number of sources.

The UPR was mandated by a resolution of the UN General Assembly and the UN Human Rights Council, and states are reviewed on the following criteria:

- The Charter of the United Nations
- The Universal Declaration of Human Rights
- Human Rights instruments to which the state is party
- Voluntary pledges and commitments made by the state (including those undertaken when presenting the candidature for election to the Human Rights Council)
- Applicable international humanitarian law⁷

...criticism that the human rights treaties monitoring bodies have also been subject to—namely that **countries only focus on their human rights records periodically, when they know a report is due.**”

Questions during the review can be inspired by various reports: A report the state itself prepares; a report prepared by non-governmental organisations (NGOs) and civil society organisations; and a report that the UN Office of the High Commissioner for Human Rights prepares from its own research.

At the end of the session, the country under review is presented with a comprehensive list of recommendations that have been put forward as to how it can improve its human rights record. The country can then “accept” or “reject” the recommendations. If accepted, it will be questioned about that topic during future sessions to see what progress has been made in the intervening period.

The frequent inquiries about these issues seem to indicate that the international community has collective concerns about certain topics, including:

- Torture
- Protection of human rights defenders
- Freedom of opinion and expression
- Enforced disappearances
- Extrajudicial executions
- Freedom of religion or belief; and
- Cooperation with civil society at the national level⁹

Two persistent complaints from observers regarding the UPR process is that the sessions are too short (only three hours), and too infrequent (once every three years). These

| ASEAN Member State | Date of UPR Appearance | Recommendations | | | |
|--------------------|------------------------|--|----------|-------------------|--|
| | | Accepted | Rejected | No clear position | Pending decision on after further review |
| Brunei | Dec 2009 | 33 | 27 | 0 | 25 |
| Cambodia | Dec 2009 | 91 | 0 | 0 | 0 |
| Indonesia | Apr 2009 | 9 | 0 | 4 | 0 |
| Lao PDR | May 2010 | 86 | 18 | 0 | 0 |
| Malaysia | Feb 2009 | 62 | 22 | 19 | 0 |
| Myanmar | Jan 2011 | **Information not yet available | | | |
| Philippines | Apr 2008 | 12 | 4 | 0 | 4 |
| Singapore | May 2011 | **Information not yet available | | | |
| Thailand | Oct 2011 | <i>N/A</i> | | | |
| Vietnam | May 2009 | 94 | 46 | 5 | 1 |

*All information in the table taken from the “State Homepages” of UPR-info.org

** As Myanmar was reviewed very recently, its Recommendations compendium was not yet available.

The UPR has not been without controversy and is not uniformly popular among states (some of which feel that it is an additional reporting burden to an already crowded human rights calendar). Nevertheless, by the end of 2011, all 192 member states of the UN will have gone through one round of UPR. Most of the ASEAN countries and their neighbours in South and Southeast Asia have already undergone UPR⁹. While generalisations are impossible, statistics put together by UPR Info—a non-profit organisation which objectively tracks the UPR process and its outcomes—have identified several issues that UN member states from the region have each been questioned about during their UPR appearances.

complaints echo criticism that the human rights treaties monitoring bodies have also been subject to—namely that countries only focus on their human rights records periodically, when they know a report is due. While it could be argued that any public scrutiny regarding human rights is positive, there is some merit to these arguments, though no workable alternative has yet been put forward. Thus, it seems unlikely that immediate impact will come from this quarter. A better model for enforcing human rights in Southeast Asia may be a regional system.

Admittedly, the ASEAN human rights body is still in its infancy, and **efforts so far have focused more on promotion than protection of human rights.**

Regional Human Rights Mechanisms

There are various regional human rights systems, based on geography and culture. The oldest and best established is the mechanism which has developed around the Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights (ECHR).¹⁰ In force since 1953, the Convention—inspired by the UDHR—protects a broad range of civil and political rights, and has been amended by various protocols since 1953.¹¹

All current and prospective members of the European Union have ratified the ECHR. The Convention's effectiveness is guaranteed primarily because those who ratify it agree to accept the binding judgment of the Convention's judicial body, the European Court of Human Rights.

Latin America has its own regional system, the Inter-American Commission on Human Rights (IACHR), which is an organ of the Organization of American States (OAS). The IACHR takes its authority from the 1969 American Convention of Human Rights and has the principle function of "promoting the observance and the defense of human rights."¹² It has 25 member states from Latin America, and is currently processing more than 1400 individual cases. Complaints can be brought by individuals, groups, or NGOs who allege that

one of the OAS member states is responsible for a human rights violation. Notably, the IACHR website observes that:

"[the] Commission may also process cases where it is asserted that a State failed to act to prevent a violation of human rights or failed to carry out proper follow-up after a violation, including the investigation and sanction of those responsible as well as the payment of compensation to the victim."¹³

The ability to address cases where it is alleged that a state failed to prevent a violation, or failed to properly "follow-up" on allegations is a more progressive and proactive approach than the European system, but also more difficult to implement in real terms. However, both the European and Latin American systems can be commended for their locally-developed methods for dealing with rights violations in their own backyard.

Asia has lagged behind its European and Latin American peers in the establishment of a regional human rights mechanism. And it is highly unlikely that any Asian system which does evolve will contain either binding court judgments like the European system or sanctions for "failure to prevent" like the Latin American system. Nonetheless, in November 2007, after many years of debate and discussion, the

Relevant Clauses from the ASEAN Charter Relating to Human Rights

| | |
|---|--|
| Article 1(7) (Selected language from Article 1) | The Purposes of ASEAN are: "to strengthen democracy, enhance good governance and the rule of law, and to promote and protect human rights and fundamental freedoms, with due regard to the rights and responsibilities of the Member States of ASEAN." |
| Article 2(2)(i) (Selected language from Article 2) | ASEAN and its Member States shall act in accordance with the following Principles: "respect for fundamental freedoms, the promotion and protection of human rights and the promotion of social justice." |
| Article 14 | In conformity with the purposes and principles of the ASEAN Charter relating to the promotion and protection of human rights and fundamental freedoms, ASEAN shall establish a human rights body. |

ASEAN member states took the admirable first step towards creating the first formal regional Asian human rights system with the publication of the ASEAN Charter. The Charter entered into force on 15 December 2008 and, notably, contains language which specifically supports human rights and lays the groundwork for the establishment of an ASEAN human rights body.

Admittedly, the ASEAN human rights body is still in its infancy, and efforts so far have focused more on promotion than protection of human rights.¹⁴ However, even gaining consensus to openly discuss such a sensitive topic is promising, and the developments since 2008 show potential. A Working Group for the ASEAN Human Rights Mechanism meets regularly to hash out the parameters under which such a mechanism will operate.

The Gap Between Legislation and Implementation

Even with the best of intentions, any ASEAN rights mechanism is several years away from providing Southeast Asian citizens with any kind of immediate relief from human rights violations. And even once it becomes operational, equitable access to justice and support for rule of law will largely depend on the strength of domestic institutions. The best protection for ordinary people will be better implementation of existing domestic laws, strengthening of legal bodies and improvements in legal education, which, in turn, will facilitate effective implementation of ASEAN mechanisms.

Every ASEAN member state has existing domestic laws which—if routinely and robustly implemented—could be strong tools to promote and protect human rights, even if not couched in specific human rights language. For example, each country has some language within its criminal laws or criminal procedure code relating to the process that must be followed to ensure the accused has a fair trial without a prolonged pre-trial detention period. In almost all cases,



these laws don't match the idealised language of the UDHR. Yes, more work can and should be done to improve the laws; but if the goal is actually to prevent citizens' rights from being violated, rather than just talk about prevention, then the most pragmatic solution is to use the instruments which already exist.

NGOs like International Bridges to Justice (IBJ)¹⁵ work with governments and use countries' existing domestic legislation to ensure that all citizens have the right to competent legal representation, the right to be protected from cruel and unusual punishment, and the right to a fair trial. Human rights violations are less likely to occur if the presumption of innocence and respect for the rights of the accused are enshrined at every step of the legal process. The IBJ believes that to ensure this respect, there needs to be a sufficient number of trained and available public defenders and legal aid lawyers. Defenders need to be organised in a structure and work within a system which ensures that criminal defendants have access to them at the earliest legally mandated time. Crucially, there needs to be a judicial environment which respects and embraces the role of public defenders.

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International treaties can provide inspiration for better laws in the future, and **regional human rights systems can play crucial supervisory and diplomatic roles.**

After several years of operating in Asia, the IBJ has found that a country's failure to live up to its human rights goals is primarily the result of lack of resources and capacity. For example in Laos, a member state of ASEAN and the United Nations, Article 28 of the Criminal Procedure Law describes the rights of the accused. According to this article, the accused has the:

- right to be informed of, and to defend against, the charge(s) leveled against him/her
- right to meet and retain a lawyer
- right to participate in court proceedings
- right to file a complaint against acts and orders of investigators, prosecutors or people's court he/she believes has acted unlawfully
- right to make a final statement, and
- right to appeal

In theory, these principles are very much in line with international standards. However, in practice, Laos is one of the UN's "Least Developed Countries,"¹⁶ with a per capita GDP of \$2400, and a population that has only a 73% literacy rate. Four out five Laotians make their living from subsistence agriculture, and citizens average nine years of education (compared to 16 in the United States).¹⁷ Out of a population of 6.5 million, there are only 100-150 practising lawyers. Without help from the international community, the hope that the average Laotian citizen would be able to effectively demand legal rights, or that the Laotian government would be able to effectively guarantee such rights, is implausible.

It is in circumstances such as these that NGOs like IBJ can help close the gap between legislation and its implementation. The first step must be to teach citizens about their rights through awareness campaigns. One cutting-edge approach shared by a Malaysian participant at a recent IBJ training was the use of social media such as Twitter to educate Malaysians about the protections included in their constitution. An admirable 21st-century twist on the "Advisement of Rights" campaigns that IBJ has been conducting throughout Asia for more than a decade, the advent of the internet has heralded this and other inexpensive tools that can empower a wider audience.

In addition to educating the populace, increasing the number of public defenders is critical; no less critical, though, is facilitating conversations between judges, prosecutors, police and the defense bar to ensure all components of the judicial system are working in tandem to protect the rights of the accused. If all the players understand each others' respective roles, then there is less room for suspicion and misunderstanding. IBJ has a long and successful history of establishing such networks through training events in Asia, most recently in Singapore.

A transparent and functioning legal system is the bedrock of society, as it provides the foundation not only for citizens' trust in their governments, but governments' trust in other countries and foreign investors' trust in their investments. International treaties can provide inspiration for better laws in the future, and regional human rights systems can play crucial supervisory and diplomatic roles.

However, IBJ believes that educating ordinary Asian citizens about their legal rights, strengthening the capacity of legal institutions, and helping governments uphold the obligations they have committed to in domestic law are the most effective ways to promote human rights in Southeast Asia today.



1. The Association for Southeast Asian Nations (ASEAN) was established on 8 August 1967; it includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam. Information taken from: "ASEAN Member States," available at <http://www.aseansec.org/18619.htm>.
2. 60th Anniversary of the Universal Declaration of Human Rights—Photo Gallery, available at <http://www.ohchr.org/EN/UDHR/Pages/60UDHRPhotoGallery.aspx>.
3. "Yearbook of the United Nations", first printing November 1950, available at <http://www2.ohchr.org/english/issues/education/training/docs/UNYearbook.pdf>, page 527.
4. Ibid, <http://www2.ohchr.org/english/issues/education/training/docs/UNYearbook.pdf>, page 535.
5. "Human Rights Treaty Bodies" (Monitoring the Core International Human Rights Treaties), available at: <http://www2.ohchr.org/english/bodies/treaty/index.htm>.
6. Information about treaty signature and ratification taken from United Nations Treaty Collection, available at <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.
7. Q&A on the Modalities of the UPR process , available at <http://www.upr-info.org/-UPR-Process-.html>.
8. At the time of writing, Thailand has not undergone the process which is to take place in October 2011.
9. See "Issue's Analysis: Human Rights Defenders", available at http://www.upr-info.org/IMG/pdf/IA_Human_Rights_Defenders_FactSheet_S1-5.pdf; and similar titles, available at: http://www.upr-info.org/IMG/pdf/IA_FreedomofOpinion_Expression_FactSheet_S1-5.pdf; http://www.upr-info.org/IMG/pdf/Issue_Analysis_Enforced_Disappearances.pdf; http://www.upr-info.org/IMG/pdf/Issue_Analysis_Extrajudicial_Executions.pdf; http://www.upr-info.org/IMG/pdf/IA_Torture_FactSheet_S1-5.pdf; http://www.upr-info.org/IMG/pdf/Issue_Analysis_Civil_Society_national_level.pdf; <http://www.upr-info.org/-Freedom-of-religion-and-belief-.html>.
10. See "Convention for the Protection of Human Rights and Fundamental Freedoms, CETS: 005," available at <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>; opened for signature November 1950.
11. "Convention for the Protection of Human Rights and Fundamental Freedoms: Summary of Treaty," available at <http://conventions.coe.int/Treaty/en/Summaries/Html/005.htm>, last visited at 14 April 2011
12. See "What Is the IACHR," available at <http://www.cidh.oas.org/what.htm>; last visited 14 April 2011
13. Ibid.
14. Pravit Rojanaphruk, "Human Rights in ASEAN Seen as Paper Tiger," *The Nation*, October 15, 2010, <http://www.aseanhrmech.org/news/human-rights-in-asean-seen-as-paper-tiger.htm>.
15. IBJ's Singapore Justice Training Center (SJTC) was launched in January 2010 after IBJ was named one of the winners of the 2009 Lien i3 Challenge, offered by the Lien Centre for Social Innovation to foster ideas that can be implemented to create positive social impact. IBJ used its award to found the SJTC and support the 2010 Asia JusticeMakers project, an innovative criminal justice competition that that sources and fund grassroots legal rights projects in developing countries, while building bridges among legal aid advocates in disparate places. Winners receive \$5000 in seed money, and a year of institutional support from IBJ. Fellows from the 2010 JusticeMakers class are creating better juvenile justice programs in Vietnam and Malaysia; aiding pre-trial detainees in India, Sri Lanka and Indonesia; addressing land reform in the Philippines; and empowering brick kiln workers in rural Pakistan.
16. "Least Developed Countries: Country Profiles," available at <http://www.unohrls.org/en/ldc/related/62/>, last visited 15 April 2011
17. "CIA World Factbook, East and Southeast Asia: Laos," available at <https://www.cia.gov/library/publications/the-world-factbook/geos/la.html>.